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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 380th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 May 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.380/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Morocco (CAT/C/43/Add.2; HRI/CORE/1/Add.23)

1. At the invitation of the Chairman, Mr. Benjelloun-Touimi, Mr. Belmahi, Mr. Habib Belkouch and Mr. Majdi (Morocco) took places at the Committee table.

2. The CHAIRMAN invited the delegation to introduce the second periodic report of Morocco.

3. Mr. BENJELLOUN-TOUIMI (Morocco) said that his country viewed human rights as an end in itself and as an essential factor of economic development. A series of normative and institutional measures had been introduced and specific actions undertaken to strengthen respect for human rights. The country's political will had found concrete expression in the reform of the Constitution and the appointment, in April 1998, of a new Government headed by a long-standing champion of human rights. In a context thus favourable to the protection of fundamental rights and freedoms, political prisoners had been released, exiles had been authorized to return to their country and persons involved in criminal cases of a political nature had been pardoned; furthermore, the cases of 112 persons presumed to have disappeared between 1960 and 1980 had been clarified, and the persons concerned or their next of kin were to receive compensation.

4. The authorities, anxious to establish the rule of law, were giving particular attention to judicial reform, promoting the independence of the judiciary and strict compliance with the law. They were also anxious to humanize the prison environment and, to that end, were endeavouring to improve detention conditions, an undertaking made difficult by prison overcrowding. The number of doctors employed in prisons had risen. Abuses and negligence were punished, and a mechanism for detecting deaths due to ill-treatment had been established. Moreover, a counter-investigation could be conducted at the request of members of the deceased person's family or of non-governmental organizations (NGOs). Places of detention could be visited for the purpose of checking their conformity with the rules. All sectors of society were invited to contribute towards those reforms.

5. The State was also making efforts in another field, that of dissemination of human rights culture. To that end, a programme designed to introduce the teaching of human rights into the school curriculum had been drawn up in collaboration with the Office of the United Nations High Commissioner for Human Rights. It was also planned to establish a human rights documentation and training centre within the same cooperation framework. The Government was making efforts to strengthen its dialogue both with national associations concerned with the defence of human rights and with international and regional organizations. Thus, various events had taken place, in particular meetings with national institutions of Mediterranean countries and with the Secretary-General of Amnesty International, and regional conferences on human rights had been held.

6. So far as the Committee's recommendations were concerned, note should be taken of the Prime Minister's declaration that "the Moroccan Government will adapt Moroccan laws to international instruments". To that end, the Ministry of Human Rights had received a mandate to investigate the conformity of Moroccan laws and regulations with international human rights standards and to amend them in consequence, as well as to identify any obstacles to the implementation of those standards.

7. In conclusion, he said that the Moroccan delegation was ready to provide the Committee with any information that members might consider necessary, and assured the Committee that its suggestions and recommendations would be transmitted to the authorities.

8. Mr. CAMARA (Country Rapporteur), welcoming the opportunity to enter into a fruitful dialogue with the Moroccan delegation, recalled that following the consideration of the initial report of Morocco the Committee had addressed some recommendations to the State party, some of which had been implemented, viz. the publication of the Convention against Torture in the Official Bulletin in December 1996 making the Convention not only applicable but also invokable against any authority and the introduction of political reforms towards the establishment of the rule of law. On the other hand, no action had been taken on two recommendations of major importance: the definition of torture as set forth in article 1 of the Convention had not been incorporated in domestic law and the State party had not made all acts of torture offences under its criminal law as it was required to do under article 4 of the Convention. Moreover, Morocco had not withdrawn its reservations to articles 21 and 22, which considerably restricted the Convention's scope of application. More information on those points would be welcome, as also would an assurance by the State party that everything would be done to remedy those omissions.

9. In connection with the provisions of article 3 of the Convention, paragraph 32 of the report described the procedure governing refoulement, expulsion and extradition and added that "such measures are adopted by administrative decision and the alien can always appeal to the relevant administrative court for their annulment". He would appreciate fuller information about the legal mechanism for making such an appeal and wondered whether it was in fact resorted to. He also wished to know whether Morocco had acceded to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; the definition of a refugee given in that instrument was broader than that in the 1951 Convention relating to the Status of Refugees. Furthermore, Morocco should comply with article 3 of the Convention, which protected all persons from expulsion, refoulement or extradition where there were substantial grounds for believing that they would be in danger of being subjected to torture, whereas it emerged from paragraph 35 of the report that, the State party was applying restrictive provisions in that area.

10. The provisions of articles 751 and 756 of the Moroccan Penal Code, like those of article 701 of the draft Code of Penal Procedure, were contrary to article 5.2 of the Convention in that they placed restrictions upon the jurisdiction of the State party. Similarly, the Moroccan provisions concerning the detention of a person suspected of having committed an act of torture were not in conformity with article 6 of the Convention. While

torture was not a criminal offence under Moroccan law, the provisions of the Dahir of 8 November 1958 were not applicable to aliens having committed acts of torture against another alien or outside Moroccan territory. For the same reasons, the State party could not fully discharge the obligation to extradite or prosecute because the courts could not exercise their jurisdiction under all circumstances. Moroccan law was therefore not in conformity with article 7 of the Convention. Lastly, with reference to the principles relating to extradition treaties concluded between States parties, which formed the subject of article 8 of the Convention, he asked for further information as to how the State party was planning to enter into full compliance with the provisions of that article, and in particular with its paragraph 4.

11. Mr. GASPAR (Alternate Country Rapporteur) commended the efforts made by the State party to strengthen the protection of human rights. In particular, referring to the question of mutual judicial assistance dealt with in article 9 of the Convention, he welcomed the fact that under the agreements on mutual judicial assistance concluded by Morocco it was on no account possible to invoke the political nature of offences in order to refuse to cooperate at the judicial level. He wished to know, however, whether under Moroccan law all the offences listed in article 4 could form the subject of the most extensive possible mutual judicial assistance even in the absence of bilateral treaties.

12. With reference to the implementation of article 10 of the Convention concerning the training of law enforcement personnel, he noted that education and training were the best means of preventing acts of torture and ill-treatment. Additional information would therefore be welcome concerning the nature of the instruction given, its duration, and any adult education or other programmes introduced in Morocco in the human rights field. Paragraphs 71 to 75 of the report did describe the efforts undertaken by the State party in that area, but some concerns still remained, especially with regard to the training of law enforcement officers in rural areas.

13. Under articles 12 and 13 of the Convention, States parties were required to proceed to a prompt and impartial investigation wherever there was an allegation of torture, without it being necessary for the victim to have lodged a complaint. Yet the Committee had received information from NGOs to the effect that the Moroccan authorities refused to start an inquiry unless a formal complaint had been lodged by the victim. He would like to hear the Moroccan delegation's comments on that point and to receive additional information on the nature of complaints addressed to the Ministry of Human Rights and to the Advisory Council on Human Rights as well as on action taken on them.

14. In June 1988 an NGO had transmitted to the Advisory Council on Human Rights a list of 30 cases of deaths which had occurred during or following detention between 1994 and 1998; investigations had apparently been held and a member of the security forces punished. It would be useful to the Committee to hear the results of those investigations and any decisions taken in consequence.

15. It would be interesting to know whether any compensation was envisaged for the persons presumed to have disappeared who had, in fact, been in prison. Could those among them of whom it was established that they had been tortured also claim compensation and possibly benefit from rehabilitation programmes? Lastly, had any effort been made to establish the penal or disciplinary responsibility of persons responsible for the death or imprisonment of "disappeared" persons whose name had been cited by the Advisory Council?

16. Moroccan law did not expressly provide that evidence obtained by torture was inadmissible; it should be brought into line with the provisions of article 15 of the Convention, which provided that not only confessions or testimony by witnesses, but also indirect evidence obtained by torture, could not be invoked. Even official statements by police officers had to be treated with caution. It would be interesting to know whether such statements were made exclusively in cases of flagrante delicto and related to directly verifiable facts or whether they could also deal with declarations made by suspects or witnesses.

17. In connection with article 16 of the Convention, it would be useful to hear the delegation's comments on the subject of allegations made by certain NGOs concerning conditions of custody in police stations and even in certain institutions of a social nature, as well as concerning police raids and other acts that could be described as cruel, inhuman or degrading treatment. In particular, he asked what action had been taken over the much-discussed case in which a suspect arrested by an "anti-gang brigade" in April 1995 had allegedly been taken to a public square in Rabat, forced to accuse himself and exposed to public opprobrium.

18. Mr. GONZÁLEZ POBLETE remarked that, in view of the progress already made, Morocco could perhaps decide to withdraw the reservation to article 20 it had entered when ratifying the Convention.

19. The report under consideration said nothing about military jurisdiction in criminal matters. It would be useful to have some details about the jurisdiction of military courts and to hear whether it extended beyond cases concerning the army. Were military courts empowered to try certain acts committed by civilians or to try military personnel for breaches of ordinary law? In particular, what happened if a member of the armed forces was accused of acts of torture?

20. Lastly, it appeared from the report under consideration that once a convention had been published in the Official Bulletin, it prevailed over domestic law in the event of a contradiction between them. In view of the fact that the Convention had been ratified in 1993 but published in the Official Bulletin only in 1996, what was the situation regarding acts of torture committed between those two dates, when the State party had already been subject to the provisions of the Convention inasmuch as it had ratified that instrument?

21. Mr. MAVROMMATIS noted with satisfaction the changes made in Moroccan law which represented a considerable advance towards the protection of human rights, even if a great deal still remained to be done with regard to torture, since the organs most likely to commit acts of that kind were not as yet under

sufficiently close scrutiny; specific measures had to be taken to prevent or terminate such practices. So far as legislation was concerned, the Committee's observations would undoubtedly be taken into consideration in the preparation of a new penal code and a new code of penal procedure, but practical measures would also have to be taken, including, in particular, steps to educate and sensitize law enforcement personnel, but also, for example, the introduction of unannounced visits to police stations.

22. Police custody was normally limited to 48 hours but could be extended to 96 hours in cases of violation of State security: it was legitimate to wonder why the lawmakers had deemed it necessary to provide for such a long period and whether, and by whom, the person held could be authorized to contact a lawyer.

23. The Committee considered it necessary that States parties should incorporate in their laws, in some form, the definition of torture set forth in the Convention. The existing provisions of Moroccan law, for example those relating to assault and battery, did not entirely cover the acts dealt with in the Convention, and the simplest way of prohibiting them would be to list them in extenso. The same applied to ruling out any evidence obtained by torture: an express provision on that point was the best means of convincing potential perpetrators of acts of torture of the futility of such acts. Lastly, the provisions relating to extradition for acts of torture could also be expanded; their importance had recently been demonstrated by the case involving that notorious torturer, Mr. Pinochet.

24. Mr. SØRENSEN also welcomed the advances achieved in Morocco. In particular, the situation with regard to raising the awareness of law enforcement officials under article 10 of the Convention was highly positive. But the report did not indicate whether instruction in human rights had also been introduced for medical personnel; yet doctors played a primary role in the torture problem - a deplorable role when they invented methods leaving no trace, participated in torture or falsified medical or autopsy reports, and a useful one when they worked towards the rehabilitation of victims. It was therefore essential for the training of medical personnel to include adequate instruction on human rights and the prohibition of torture. He would appreciate more information on that point, and suggested that medical issues should be incorporated in the training to be provided at the human rights training and documentation centre.

25. In connection with police custody, it would also be useful to hear whether a suspect could, immediately on arrest, inform a third party of his or her situation and ask to be examined by a doctor of his or her choice.

26. The situation of prisoners had greatly improved, many of them had been released and the Standard Minimum Rules for the Treatment of Prisoners were now the norm being applied in Morocco. In that connection, it was stated in paragraph 93 that detainees placed in solitary confinement had the right to be visited regularly by the in-house doctor, but also that solitary confinement could be extended beyond 15 days by a decision of the central administration. It would be useful to know whether such extension was a common or only an occasional measure and whether or not the administration could reapply it indefinitely. Paragraphs 98 and 99 gave an idea of the seriousness of the

problem of overcrowding in prisons. It would be interesting to know the number of prisoners that Moroccan prisons could normally accommodate as compared with that of persons actually imprisoned, as well as the proportion of pre-trial detainees as against convicted prisoners.

27. The Moroccan representative had said that an autopsy was practised systematically on all detainees who died; he would like to know how many had died in, say, 1997 or 1998, as well as the result of the autopsies. In the event of deaths not due to natural causes, was an investigation held in order to determine the nature of those causes (assault, lack of food, etc.)?

28. In connection with article 14 of the Convention, it was legitimate to hope that a rehabilitation centre for victims would be opened in Morocco and that it would have the Government's support. With regard to compensation for victims, it should be realized that victims of injustice were extremely sensitive to any manifestation of respect towards them; even a token contribution to the Voluntary Fund for Victims of Torture, made, for example, on the occasion of the International Day in Support of Victims of Torture, would certainly be very favourably received by them.

29. Mr. EL MASRY, recalling that article 5 required each State party to establish its jurisdiction where the alleged offender was present in any territory under its jurisdiction, asked the Moroccan delegation to comment on the fact that certain persons responsible for human rights violations in Polisario Front camps in Algeria were now in Morocco and were even holding prominent positions in the administration.

30. Mr. YAKOVLEV urged the State party to include torture as an autonomous and specific offence in its Penal Code and also to include all parts of the definition of torture appearing in article 1 of the Convention. While the section of the report on the implementation of article 4 listed a number of articles in the Code providing punishments for various offences resulting in injury or death, it was difficult to identify acts of torture as defined in article 1. Furthermore, while the established practice in Morocco was clearly to make the severity of the punishment fit the seriousness of the injury, torture had to be punished whether or not it caused serious injury or death, and it also had to be punished as an offence committed by a public official or any other person acting in an official capacity. Moreover, the law in force in Morocco did not indicate that torture was generally practised for a specific purpose - that of obtaining a confession or information, or that of punishing a person suspected of a crime - and failed to cover moral suffering, which could be even more unbearable than physical suffering.

31. Mr. YU Mengjia said that the Minister of Justice in Morocco was, as he understood, empowered to appoint judges on a provisional basis or to suspend them from office. If that was the case, could the practice be considered compatible with the principle of the independence of the judiciary?

32. The CHAIRMAN asked why the report spoke of "police custody" while Amnesty International used the expression "incommunicado custody". In the same connection, he asked whether it was true that during that period detainees could only inform their family of their detention and, consequently, had no access to a lawyer or a doctor of their choice.

33. While welcoming the obvious advances achieved by the State party since the consideration of the initial report, he asked for more information on two cases involving ill-treatment.

34. One was mentioned in paragraph 489 of the report of the Special Rapporteur and concerned two young Polisario Front sympathizers who had allegedly been arrested and charged with minor customs offences (they had apparently tried to import contraband cattle and to smuggle in cigarettes) before being released by the Court of First Instance, but the prosecutor was said to have appealed against that decision. What had been the outcome of that procedure?

35. The other case, reported quite recently by Amnesty International, concerned a young man aged 17 convicted of theft who had been placed in the adult part of a prison where he had been raped by fellow detainees. Not only had the prison warders done nothing to prevent the sexual aggression, but the prison authorities had also tried to hush up the case, so that the victim's family had only heard of it from some prisoners. Only when the family had made an official complaint had the prison authorities recognized the facts and announced that they would institute an inquiry. What had been the results of the investigation? Bearing in mind, in particular, article 16 of the Convention, had the persons who had decided to place the minor in the adult part of the prison and the warders who had failed to prevent the rape been punished or prosecuted?

36. Mr. BENJELLOUN-TOUIMI (Morocco) said he greatly appreciated the Committee's keen interest in his country's report and was convinced that the Committee's comments would prove extremely useful. In terms of the promotion and protection of human rights, Morocco was at present rather like a large building site. The law had to be reformed to conform to the obligations deriving from international treaties, and at the same time, it was necessary to change people's mentalities, a process which had to take place at the stage of training in general and of police training in particular.

37. The Moroccan delegation withdrew.

The first part (public) of the meeting rose at 11.25 a.m.